IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

CHRISTINE BUCK, Appellant, v. ADEM GERZIC and JANE DOE GERZIC, husband and wife, and TRAVELLERS CASUALTY AND INSURANCE CO., a foreign corporation, Respondents.	) NO. 61837-7-I)))) UNPUBLISHED OPINION)))))) FILED: May 18, 2009

BECKER. J. -- To be timely, an appeal must be filed within 30 days of the order being appealed. Under CR 59 and RAP 5.2(e), a motion for reconsideration filed in the trial court will extend the time for appeal only if the motion for reconsideration is itself timely, that is, filed within 10 days. Because appellant Christine Buck's motion for reconsideration was filed late and her

efforts to characterize it in hindsight as a motion under CR60(b) are unpersuasive, we dismiss her appeal as untimely.

Buck sued Adem Gerzic in connection with Gerzic's work on a home remodel, pleading damages of $5,000. The trial court dismissed the case on February 1, 2008, because Buck had failed to answer Gerzic's discovery requests.

On February 11, 2008, Gerzic sought an award of attorney fees and costs of $18,054 under RCW 4.84.250. He supported his motion with billing records, an affidavit stating counsel's hourly rate, and an extensive memorandum setting forth the chronology of the litigation and the proposed application of the lodestar methodology under Mahler v. Szucs, 135 Wn.2d 398, 434, 957 P.2d 632 (1998). Gerzic submitted a proposed order along with findings of fact and conclusions of law and judgment summary. The proposed order would have made counsel for Buck jointly and severally liable for the fees along with Buck. Buck responded on February 19, 2008. She gave her own version of what happened in the litigation and asked the court to dismiss the motion for fees because the requested fees were excessive.

On March 3, 2008, the trial court signed Gerzic's proposed order after making certain handwritten changes. One change reduced the award to $14,514. Another change deleted the provision for joint and several liability, indicating the court's intention to make Buck alone responsible for paying

Gerzic's attorney fees. The court neglected, however, to make this change in the judgment summary.

On March 17, 2008, 14 days after the order, Buck filed a motion for reconsideration. The motion pointed out that the judgment summary should have been changed to be consistent with the order. The motion also reargued, albeit in more detail, Buck's previously stated position that the fees awarded were excessive.

By letter to the court dated March 18, 2008, counsel for Gerzic agreed that only Buck should be listed as a debtor in the judgment summary. The letter was accompanied by a proposed amended order correcting this and other mechanical errors and incorporating the court's handwritten interlineations to produce a clean printed copy.

On March 19, 2008, the court signed the amended order. At the end of the order, the court added: "This order will also serve as denial of Plaintiff's motion for reconsideration without prejudice to renew that motion based on this amended order."

On March 28, 2008, Buck accepted the court's invitation and renoted the motion for reconsideration.

On April 11, 2008, the trial court entered an order inviting Gerzic to respond to Buck's re-noted motion. On April 23, 2008, Gerzic responded and objected that the re-noted motion for reconsideration was an impermissible

"second bite of the apple." On May 19, 2008, the trial court entered an order denying the re-noted motion for reconsideration:

> The court made a further review of the specific objections to the fees allowed to Defendants and finds that fees requested, less the previous reductions, are reasonable.
>
> . . .
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> Plaintiff's Re-Noted Motion for reconsideration is DENIED with prejudice.

On June 13, 2008, Buck filed a notice of appeal seeking review of the findings of fact and conclusions of law entered on March 3, 2008. By letter dated July 3, 2008, this court notified both parties that the notice of appeal filed on June 13 was untimely. On July 7, 2008, Buck filed an amended notice of appeal "to include the Order on Reconsideration dated May 19, 2008."

On July 21, 2008, Gerzic moved to dismiss the appeal as untimely. That motion is now before this court. Because we agree that Buck's appeal is untimely, we dismiss it without reaching the merits.

Buck's appeal is untimely because she failed to file a timely motion for reconsideration. Consequently, the 30-day time period for filing an appeal was not extended; it began to run on March 3, 2008, the date of entry of the original order.

> A party is allowed 30 days in which to file a notice of appeal. RAP 5.2(a). This 30-day time limit can be extended due to some specific and narrowly defined circumstances (none of which apply here). RAP 5.2(a). It can also be prolonged by the filing of "certain *timely* posttrial motions", including a motion for reconsideration. (Italics ours.) RAP 5.2(a), (e). A motion for reconsideration is timely only where a party both files and serves the motion within 10

> days. CR 59(b). A trial court may not extend the time period for filing a motion for reconsideration. CR 6(b); Moore v. Wentz, 11 Wn. App. 796, 799, 525 P.2d 290 (1974).
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> Here, Schaefco filed the motion for reconsideration within 10 days of the Superior Court's July 2 order. However, it did not serve the motion on the Commission until July 16—4 days past the allowable time limit. Because Schaefco's motion for reconsideration was not timely, it did not extend the 30-day limit for filing the notice of appeal. As such, the notice of appeal Schaefco filed on September 9 was well outside the 30-day time limit.

Schaefco, Inc. v. Columbia River Gorge Comm., 121 Wn.2d 366, 367-68, 849 P.2d 1225 (1993).

CR 59(b) has been partly changed since Schaefco. The current rule does not require the motion to be served, but only to be "filed," within 10 days after the judgment:

> (b) Time for Motion; Contents of Motion. A motion for a new trial or for reconsideration shall be filed not later than 10 days after the entry of the judgment, order, or other decision. The motion shall be noted at the time it is filed, to be heard or otherwise considered within 30 days after the entry of the judgment, order, or other decision, unless the court directs otherwise.
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> A motion for a new trial or for reconsideration shall identify the specific reasons in fact and law as to each ground on which the motion is based.

CR 59(b). This change, however, does not help Buck because she did not file her first motion for reconsideration until 14 days after the entry of the order awarding attorney fees to Gerzic.

Buck argues that she corrected this problem by filing the amended notice of appeal to include the order entered by the trial court on May 19. Buck

presents the following chronology as establishing the timeliness of her appeal. First, on March 19, the court entered the amended order that invited Buck to renote her motion for reconsideration. Second, Buck renoted her motion on March 28, within 10 days of March 19. Third, the court denied the renoted motion on May 19. Fourth, Buck appealed on June 13, within 30 days, and although her notice of appeal mentioned only the March 3 order, that defect was cured on July 7 when she filed the amended notice of appeal mentioning the May 19 order. Buck assumes that the amended notice of appeal related back to the original notice of appeal filed on June 13.

Whether or not an amended notice of appeal can relate back and breathe new life into an otherwise untimely notice of appeal is an issue we need not reach. Even if it could, there is no way to paper over the earlier flaw created by Buck's failure to file a timely motion for reconsideration. Just as in Schaefco, the timeliness of the appeal is not measured from the date the trial court denied the untimely motion for reconsideration. It is measured from the date of the original order that the appellant is trying to overturn or modify. See Schaefco, 121 Wn.2d at 367 (final order entered on July 2; superior court denied untimely motion for reconsideration on August 16; notice of appeal filed on September 9 was untimely).

Buck attempts to distinguish Schaefco on the basis that the superior court did not amend its final order in that case; it simply denied the motion for

reconsideration – whereas here the superior court, on March 19, entered what Buck perceives to be the actual final order in the case and invited Buck to renote her motion for reconsideration. We do not find that distinction in Schaefco. The Supreme Court stated very clearly in Schaefco that a trial court does not have the authority to extend the time for filing a motion for reconsideration. Schaefco, 121 Wn.2d at 367-68; CR 6(b). The invitation to renote the motion for reconsideration did not reset either the 10-day clock or the 30-day clock. Even if the trial court had granted either one of Buck's motions for reconsideration and entered a new order denying fees or awarding a lesser amount, such order would be ineffective to alter the status of the March 3 order as the final, appealable order in the case.

Buck alternatively contends that the motion she filed on March 17, although it was denoted a motion for reconsideration, was in fact a motion for relief from judgment under CR 60(b) and was therefore timely because such motions may be brought up to a year after entry of the order from which appeal is taken. Specifically, Buck contends the trial court may have reasonably interpreted her March 17 motion as alleging fraud by the adverse party or as suggesting mistake, inadvertence or irregularity. These are grounds for relief under CR 60(b)(4) and CR 60(b)(1).

The March 17 motion concluded with Buck's assertion that the attorney fees sought by Buck were "beyond unreasonable, and beyond

unconscionable—they are a fraud on the Court." But the fleeting reference to fraud is not enough to transform a motion for reconsideration into a motion for relief from judgment. CR 60(b) is confined to matters extraneous to the judgment. "'The power to vacate judgments, on motion, is confined to cases in which the ground alleged is something extraneous to the action of the court or goes only to the question of the regularity of its proceedings. It is not intended to be used as a means for the court to review or revise its own final judgments, or to correct any errors of law into which it may have fallen.'" Bjurstrom v. Campbell, 27 Wn. App. 449, 451, 618 P.2d 533 (1980) (quoting Kern v. Kern, 28 Wn.2d 617, 619, 183 P.2d 811 (1947)).

In her motion of March 17, Buck did not allege fraud extraneous to the judgment, nor did she allege any mistake, inadvertence or irregularity in the sense that CR 60(b) uses those terms. Rather, she made the same basic argument propounded in her memorandum of February 19 responding to Gerzic's motion for fees—that counsel billed too many hours for such a small case. She also argued that the findings entered by the court on March 3 did not correctly employ the lodestar methodology. These are arguments that the March 3 order contained errors of law. The trial court was not free to correct an error of law except under CR 59.

The only timely and legitimate purpose of Buck's March 17 motion was to request correction of the court's clerical mistake in failing to strike from the

judgment summary the provision for joint and several liability. A trial court may correct a clerical mistake before review is accepted by an appellate court:

> (a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

CR 60(a). But a court cannot amend a final judgment under CR 60(a). "Even though a trial court has the power to enter a judgment that differs from its oral ruling, once it enters a written judgment, it cannot, under CR 60(a), go back, rethink the case, and enter an amended judgment that does not find support in the trial court record". Presidential Estates Apartment Assocs. v. Barrett, 129 Wn.2d 320, 326, 917 P.2d 100 (1996).

Thus, even though the court order of March 19 properly granted Buck relief from clerical error under CR 60(a) in response to her motion of March 17, it did not create a new final order from which she had 30 days to appeal. As to substantive legal issues, she remained subject to the rule giving her 30 days from the entry of the March 3 order to file a notice of appeal. She did not meet the 30-day deadline. Her appeal is dismissed.

Gerzic was awarded attorney fees below as allowed by RCW 4.84.250. Where a statute allows an award of attorney fees to the prevailing party at trial, the appellate court has inherent authority to make such an award on appeal.

Standing Rock Homeowners Assn. v. Misich, 106 Wn. App. 231, 247, 23 P.3d 520 (2001). Because Gerzic has prevailed on appeal as well, we award him his reasonable attorney fees subject to compliance with RAP 18.1(d).

Appeal dismissed.

Becker, J.

WE CONCUR: